

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MAR 30 3 34 PM '93

MM Docket No. 93-66

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Huntsville and Willis, Texas)

RM-8192

# NOTICE OF PROPOSED RULE MAKING

Adopted: March 8, 1993;

Released: March 30, 1993

Comment Date: May 20, 1993

Reply Comment Date: June 4, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by New Wavo Communication Group, Inc. ("petitioner"), licensee of Station KVST-FM, Channel 279C3, Huntsville, Texas, requesting the reallocation of Channel 279C3 from Huntsville to Willis, Texas. In addition, petitioner requests the modification of its construction permit for Channel 279C3 at Huntsville to specify Willis as the community of license. Petitioner states that it will apply for Channel 279C3, if reallocated.

2. Petitioner states that its proposal will result in a preferential arrangement of allotments because it provides Willis with its first local aural transmission service. In support of its request, petitioner notes that Willis is an incorporated city with a 1990 U.S. Census population of 2,764 persons. Petitioner submits that Willis is a self-governing community with a complement of civil, educational, medical, and municipal facilities. To this end, petitioner states that the reallocation of Channel 279C3 to Willis will still leave Huntsville with four local transmission services while providing Willis with its "first local service".<sup>1</sup>

3. We believe the proposal warrants further consideration since it could provide Willis with its first FM transmission service and not deprive Huntsville of its only aural transmission service. Channel 279C3 can be allotted to Willis in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.3 kilometers (3.3 miles) northwest to accommodate petitioner's desired site.<sup>2</sup> As requested, we also propose to modify petitioner's authorization for Station KVST-FM at Huntsville to specify Willis as its community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 279C3 at Willis or require the

petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. Petitioner is requested to provide information regarding reception service losses and gains that would result from adoption of this proposal, as well as any other information regarding the public interest benefits of this proposal.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

		Channel No.
City	Present	Proposed
Huntsville, Texas	259A, 269A 279C3	259A, 269A
Willis, Texas	--	279C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **May 20, 1993**, and reply comments on or before **June 4, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Frank R. Jazzo, Esq.  
Fletcher, Heald & Hildreth  
1300 North 17th Street, 11th Floor  
Rosslyn, Virginia 22209  
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. How-

<sup>1</sup> The stations are KCEY-FM, KSAM-AM/FM, and KYLR-AM.

<sup>2</sup> The coordinates for Channel 279C3 at Willis are North Latitude 30-26-55 and West Longitude 95-31-48.

ever, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.